

**REMARKS**

Claims 2, 55, 56, 62, 63, 64, 83, 84, 85, and 90 are pending in this application. Claims 2, 55, 56, 62, 63, 64, 83, 84, 85, and 90 stand rejected. Applicants have cancelled claims 55, 56, 62-64, and 84-85, and reserve the right to file a divisional or continuation application directed to the subject matter that has been cancelled or withdrawn herefrom.

Applicants note that the change in inventorship filed September 16, 2004 has been acknowledged and E.W. Collisson, I. Choi, B.J. Winslow, and M.D. Cochran are inventors of the pending instant application.

**Claim Rejections Under 35 U.S.C. §102**

Claims 2, 55, 56, 62, 63, 64, 83, 84, 85, and 90 stand rejected under 35 U.S.C. §102(a) as being anticipated by the dissertation by Stephen M. Hash. The Examiner contends that the instant invention is drawn to an isolated nucleic acid of SEQ ID NO: 5 which is allegedly disclosed in the dissertation of Stephen M. Hash who is no longer listed as an inventor on the instant application.

The Applicants respectfully traverse the Examiner's contention under 35 U.S.C. §102. As an initial matter, SEQ ID NO:5 is the nucleic acid sequence of feline CD86 as disclosed throughout the instant specification, (see, Figure 3A and the Brief Description of the Figures on page 12). The Hash dissertation does not disclose the claimed invention. Rather Hash only discloses nucleic acids encoding feline CD80 and CD28, their corresponding nucleotide sequences, and the expression of the proteins they encode. Therefore, the Hash dissertation does not anticipate the present invention as claimed.

In addition, Claims 55, 56, 62-64, and 84-85 have been cancelled. Therefore, the rejection to these claims is now moot. Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. §102(a).

**Double Patenting Rejection**

Claims 2, 55, 56, 62, 63, 64, 83, 84, 85, and 90 stand provisionally rejected under 35 U.S.C. §101 as claiming the same invention as that of claim 37 of co-pending Application Serial No. 09/303,040. Since the conflicting claims have not in fact been patented, this is a

provisional statutory type double patenting rejection. Applicants respectfully traverse the Examiner's rejection.

Claims 55, 56, 62-64, and 84-85 have been cancelled and the provisional double patenting rejection to these claims is now moot. With respect to claims 2, 83, and 90, which are directed to a nucleic acid encoding a feline CD86, a soluble feline CD86, a feline CD86 ligand, or a feline soluble CD86 ligand, applicants assert that claim 37 of co-pending application (USSN: 09/303,040) is directed to a recombinant virus comprising at least one foreign nucleic acid encoding a feline protein such as CD86 or an immunogenic protein thereof. Therefore, since a statutory type double patenting rejection is based on the "same invention," applicants respectfully assert that claims 2, 83, and 90 do not have the same scope as that of claim 37 in the co-pending application. Claims 2, 83, and 90 are directed to a nucleic acid; whereas claim 37 of USSN: 09/303,040 is directed to a recombinant virus. Therefore, applicants respectfully request reconsideration and withdrawal of the provisional double patenting rejection to claims 2, 55, 56, 62, 63, 64, 83, 84, 85, and 90.

### **CONCLUSION**

Based on the foregoing amendments and remarks, Applicants respectfully request reconsideration and withdrawal of the rejection of claims and allowance of this application.

### **AUTHORIZATION**

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 13-4500, Order No. 2976-4054US2. A DUPLICATE OF THIS DOCUMENT IS ATTACHED.

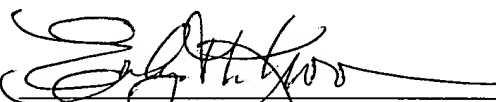
In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 13-4500, Order No. 2976-4054US2. A  
DUPLICATE OF THIS DOCUMENT IS ATTACHED.

Respectfully submitted,

MORGAN & FINNEGAN, L.L.P.

Dated: June 9, 2005

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